

# **TRADE POLICY AND THE RULE OF LAW: THE CASE OF CHINA'S WTO ACCESSION**

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Good morning. Thank you very much, and let me offer my special thanks to Dean Grossman and Professor Bradlow for bringing us together today. I am very pleased to be here today to discuss a topic of great moment for students of international law, and also for America's trade and foreign policy: China's WTO accession and permanent Normal Trade Relations.

## **ONE-WAY CONCESSIONS**

In the most basic sense, of course, this is a trade policy issue. And when we consider WTO accession and permanent NTR in these terms, we have a clear economic choice.

Last November, after years of negotiation, we reached a bilateral agreement with China on WTO accession. It secures broad, comprehensive, one-way concessions, opening China's markets for services, industrial goods and agriculture. It strengthens our guarantees of fair trade, and gives us far greater ability to enforce Chinese trade commitments. By contrast, we make no changes whatsoever in our market access policies; and in a national security emergency, we can withdraw market access China now has. We change none of our trade laws and none of our laws controlling the export of sensitive technology. We agree only to maintain the market access policies we already apply to China, and have for over twenty years, by making China's current Normal Trade Relations status permanent.

That is the only policy issue now before Congress. China will enter the WTO. Regardless of the Congressional debate, it will retain its market access in America. The only economic question now is whether we will accept the benefits of the agreement we negotiated, or simply give them to our trade competitors while American farmers and factory workers are left behind.

From the trade policy perspective, one might end the discussion right there. But the WTO accession does raise deeper issues -- and among them is a question at the heart of America's China policy debates. That is the role our country can play in reform, respect for human rights, and the development of the rule of law in China. While I will touch upon the specifics of our accession agreement, it is on this topic that I will concentrate today.

## **THE TRADING SYSTEM, HUMAN RIGHTS AND INTERNATIONAL LAW**

Let me begin by tracing American trade policy, and the institution China now seeks to join, back to its source.

Today's WTO has its roots in the General Agreement on Tariffs and Trade, or GATT; whose creation in 1948 in turn reflected the lessons President Truman and his Allied counterparts drew from personal experience in Depression and war. They had seen in the 1930s the failure to resist a cycle of protection and retaliation, including the Smoot-Hawley Act in the United States and colonial preference schemes in Europe, which had deepened the Depression and contributed to political upheaval. And eighteen years later, they believed that by reopening world markets they could restore economic health and raise living standards; and that, in tandem with a strong and confident security policy, as open markets gave nations greater stakes in stability and prosperity beyond their borders, a fragile peace would strengthen.

The work they began has now continued for fifty years. During this period, the trading system embodied by the GATT and its successor the WTO have grown in membership, from the original 23 countries to today's 134 economies and 4.5 billion people. And it has grown in scope: the tariff reduction agreements of the 1940s and 1950s remain central to its work, but are now joined by agreements on dispute settlement, agriculture, services, intellectual property, technical barriers to trade, and most recently information technology, telecommunications, financial services, and duty-free cyberspace.

Thus, over fifty years, a strong and broadly accepted set of international rules and standards for trade policy has emerged. It has succeeded in practical terms – since the 1950s, global trade has grown fifteen-fold; world economic production has grown six-fold, and per capita income nearly tripled, with attendant benefits in rising living standards, falling infant mortality rates, and broader social progress. And it has succeeded as a means of promoting the rule of law in commerce and many regulatory fields, with nations now able to settle trade disputes through impartial dispute settlement rather than raw coercion.

The foundation of the GATT, as it happens, was almost precisely contemporary with the foundation of modern international human rights law: the GATT came into force in January of 1948, and the Universal Declaration of Human Rights, negotiated by the same Administration, in the following December. The two policies thus spring from a common root in postwar internationalism; and each in turn were elements in a broader vision -- together with the economic stability and development fostered by the World Bank and IMF, and the collective security principles embodied by the United Nations, NATO and our Pacific alliances -- of a peaceful world under the rule of law.

## **THE CHINESE REVOLUTION AND THE RULE OF LAW**

China contributed to this vision: it was a founding member of the GATT, and the Confucian scholar Dr. Chang Peng-chun was among the principal drafters of the Universal Declaration. But with the Communist revolution, of course, it took a very different road.

Every student of law is familiar with the famous line from Shakespeare -- "first, let's kill all the lawyers." This quotation, though from Elizabethan England, has a peculiar relevance to postwar China: Jack Cade, the character credited with the line, is a revolutionary and a megalomaniac who plans, after finishing off the lawyers, to follow up with everybody else who can read and write. And he does this in pursuit of a specific vision:

"All shall eat and drink on my score, and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord."

Cade, in other words, hopes to create a world in which people depend on the state for economic existence, dress alike, say and think the same things, and serve an absolute ruler. Such a world has few closer parallels in real life than China under Chairman Mao, except perhaps that in the Chinese case, traders rather than lawyers came first.

Beginning in 1949, China shut the doors it once tentatively opened to the world. Among its new leaders' first steps after the revolution were to expel foreign businesses from China, and to bar direct economic contact between Chinese private citizens and the outside world. Inside China were analogous domestic policies -- destruction of private internal trading networks linking Chinese cities and villages, abolition of private property and land ownership, and of course suppression of any right to object to these policies.

And these economic measures had a clear parallel in legal affairs. Between 1949 and 1957, the number of lawyers in China shrank by 70%. In 1957, with the opening of the so-called "Anti-Rightist Campaign" and then the Great Leap Forward, most remaining law offices were closed, lawyers arrested or sent to the countryside, and the Ministry of Justice itself abolished.

Government over the next twenty years, in essence, reflected what one might call an "a-legal" society. Policy and administrative decisions rested upon the interpretation of edicts and slogans -- in some cases explicit and clear, in others as vague as "Criticize Confucius and Lin Biao," or "Eradicate the Four Olds" -- by officials aware at all times that they might be arrested either for insufficient dedication to these slogans, or for what might retroactively be seen as excessive dedication when policies changed.

## **THE REFORM ERA**

China remains today a repressive and authoritarian country. The State Department's Human Rights Report documents a lamentable record of restrictions on freedom of speech and religion,

suppression of labor rights and punishment of those who attempt to assert their rights in these areas. This is why we have sanctioned China as a “country of particular concern” under the International Religious Freedom Act, and why we will present a resolution raising concerns about China’s human rights record to the UN Human Rights Commission next week.

But the report, and our resolution as well, also note that China is not today the country Shakespeare described. It has abolished the most damaging measures of the Great Leap Forward and Cultural Revolution era, notably the rural communes and ban on private businesses in cities. It has relaxed a number of earlier policies focused on international trade, notably bans on foreign investment and private export trade. Together with these policy changes, it has made substantial progress towards the revival of law. These decisions have worked together to raise living standards; and also, in certain areas, to transform Chinese society in ways that inherently increase respect for some of the basic rights and liberties cited in the Universal Declaration:

- Property rights, with farmers able to farm their own land, entrepreneurs able to start businesses, and families able to pass on their property to their children.
- Greater openness to information, with Chinese citizens able to listen to foreign radio and TV and more recently to access foreign web-sites – a very recent example is the fellow from Beijing logging on for Internet chat last February to pepper the diplomatic correspondent of the Washington Post with questions about American policies in the Taiwan Strait.
- Some aspects of freedom of association, as Chinese meet and exchange ideas with foreigners as well as people from Hong Kong and Taiwan, and as the repressive “work-unit” system that once bound Chinese workers to particular jobs and factories has eroded.
- And of profound importance, access to courts and the legal system, as research by Dr. Pei Minxin and the Lawyers Committee for Human Rights finds, with the number of lawyers rising from one or two thousand Ministry employees to perhaps 150,000 today; more general litigation rates rising from essentially zero before 1980 to about 5 million cases by 1995; and of particular interest, the number of citizen lawsuits against government agencies rising from a few hundred in 1986 to over 50,000 a year by 1995.

Economic contacts with the outside world have played a part in much of this. To note one example, the recent research by Douglas Guthrie on Chinese businesses has shown the very positive effects of economic opening to the world in labor relations. Workers in joint ventures not only earn more, but are more likely to have and use formal grievance procedures to assert their rights and solve disputes with management. Furthermore, indigenous Chinese businesses find themselves forced to adopt similar measures, in order to attract the most qualified workers now choosing foreign employers.

## **THE ROLE OF TRADE POLICY**

And our China trade policy has helped to support and develop these trends from the beginning.

American trade initiatives in China over 30 years -- the lifting of the trade embargo in 1972; our Commercial Agreement and grant of Normal Trade Relations in 1979; textile agreements in the 1980s; and the more recent agreements on market access, intellectual property, textiles and agriculture -- rest on concrete and specific U.S. trade interests. But at the same time, they have helped us achieve broader goals.

Internationally, trade policy has supported our security interests, by integrating China into the Pacific and world economies. This has strengthened China's stake in regional peace and stability, helping reformers to move away from the revolutionary foreign policy of the 1950s and 1960s. The consequences are of fundamental importance: while we at times differ with China, we also recognize that China plays a positive, stabilizing and important part in areas as various as the maintenance of peace in Korea, the Asian financial crisis and the U.N. Security Council.

And within China, it has helped to support economic reform and the rule of law -- in some cases, given the rudimentary state of Chinese law in 1980, to build it from the ground up -- as it advanced American interests.

To choose a case in point -- and one, incidentally, with a specific grounding in Article 27 of the Universal Declaration -- our work on intellectual property rights since the early 1990s, based on our commitment to fight theft through piracy of our most creative industries, has helped us to nearly eliminate manufacturing and export of pirate CDs and CD-ROMs. But it means more than this: to develop an intellectual property policy is to draft and publish laws; to train lawyers and officials; to improve and ensure access to judicial procedures; ultimately, to create due process of law where it did not exist before. The same is true, more recently, with our work with the Chinese Ministry of Agriculture to develop modern sanitary and phytosanitary procedures for trade in wheat, citrus, poultry and meats.

## **CHINA WTO ACCESSION**

And this brings me to China's WTO accession.

The bilateral agreement we reached with China last November is the capstone on this work, and the most significant step for our China trade policy in decades. It is a comprehensive agreement which covers industrial goods, services, farm products, unfair trade practices, and all the barriers to American exports; and which in consequence will develop legal norms and rules in an absolutely vast set of fields. To give you a brief review of the specifics:

— In manufacturing, China will cut industrial tariffs from an average of 24.6% in 1997 to 9.4% by

2005. China will also eliminate all quotas and discriminatory taxes. And in virtually all products it will allow both foreign and Chinese businesses to market, distribute and service their products; and to import the parts and products they choose.

- In services, China's markets will open for distribution, telecommunications, financial services, insurance, professional, business and computer services, motion pictures, environmental services, accounting, law, architecture, construction, travel and tourism, and other industries. In fields such as distribution and telecom, this means the first opening to direct foreign participation since the 1940s.
- In agriculture, on U.S. priority products tariffs drop from an average of 31% to 14% by 2004. China will also expand access for bulk agricultural products; agree to end import bans, cap and reduce trade-distorting domestic supports; eliminate export subsidies and base food safety decisions on science.
- And we secure stronger guarantees of fairness for American workers and businesses, through specific measures against unfair trade practices, import surges, and investment practices intended to draw jobs and technology to China. These include state enterprise policies, forced technology transfer, local content, offsets and export performance requirements; for twelve years, a special remedy for market-disrupting import surges from China; and strengthening of our antidumping laws by guaranteeing our right to use a special non-market economy methodology to address dumping for 15 years after China's accession to the WTO.

These commitments are as significant for Chinese economic reform as they are for our trade policy. As they open markets for our goods, they establish the rules Chinese officials will follow in a vast array of areas, and means of redress should they violate those rules. They thus mean clear legal limits on bureaucratic discretion; they create new freedom for Chinese people to do business with the outside world and find their own way in life; and they alter policies dating to the earliest years of the communist era:

- For the first time since the 1940s, China will permit foreign and Chinese businesses to import and export freely from China.
- China will reduce, and in some cases remove entirely, state control over internal distribution of goods and the provision of services.
- China will enable, again for the first time since the 1940s, foreign businesses to participate in information industries such as telecommunications, including the Internet.
- And China will subject government decisions in all fields covered by the WTO to impartial dispute settlement when necessary.

## **WTO ACCESSION AND INTERNATIONAL STANDARDS**

As the Lawyers Committee for Human Rights has argued, such measures mean a more full adoption of internationally accepted standards for domestic law, regulation and administrative procedure. And this observation in turn brings us back to the earliest principles of American postwar diplomacy, and the original links the postwar leaders saw between open world markets, the advance of human rights, and the strengthening of peace.

The commitments in the WTO accession are a remarkable victory for economic reformers in China. They give China's people more access to information, and weaken the ability of hardliners to isolate China's public from outside influences and ideas. Altogether, they reflect a judgment -- still not universally shared within the Chinese government -- that prosperity, security and international respect will come not from the static nationalism, state power and state control China adopted after the war; but rather the economic opening to and engagement with the world, and ultimately development of the rule of law, embodied by the initiative President Truman began in 1948.

That is why some of the leading advocates of democracy and human rights in Hong Kong and China -- Bao Tong, jailed for seven years after Tiananmen Square; Ren Wandong, one of the founders of China's modern human rights movement; Martin Lee, the leader of Hong Kong's Democratic Party -- see this agreement as China's most important step toward reform in twenty years. To turn away from it would be to reject their judgment, and to assert that not just the best, but the *only* way for us to contribute to reform and liberalization in China is to stand back and shout.

## CONCLUSION

That in my view would be an extraordinary mistake. Such a U.S. retreat, at this most critical moment, would harm every significant interest we have in our relationship with China.

In economic terms, it would be foolish. China will enter the WTO regardless of our decision on permanent NTR; to vote against it is simply to give the benefits of accession to our competitors and punish our own farmers and factory workers.

In terms of our broader relationship with China, it would be reckless. No trade agreement will ever solve all our disagreements, but this will address many of them; and if we turn down a comprehensive set of one-way concessions, we make a very dark statement about the future possibility of a stable, mutually beneficial relationship with the world's largest country. As the President has said, to reject PNTR would be to lessen the chance that China will choose the right path in the years ahead.

And it would be just as damaging for the concerns and responsibilities we feel towards human rights and the rule of law. To reject permanent NTR is to turn our backs on nearly thirty years of work to support reform, improve the legal system and offer hope for a better life to hundreds of millions of Chinese. And it is to give up the hope of contributing in the future to a China freer, more open to the world, and more responsive to the rule of law than it is today.

These are the stakes as Congress prepares to vote. This is why the Administration is committed to permanent Normal Trade Relations status for China on the basis of this historic agreement. And that is why it is so important that we succeed.

Thank you very much.